

REMARKS

Claims 1-31 and 37-46 are pending in the application. Claims 11 and 38 have been amended herein to correct typographical errors. Favorable reconsideration of the application, as amended, is respectfully requested.

I. REJECTION OF CLAIM 11 UNDER 35 U.S.C. § 112

Claim 11 stands rejected under 35 U.S.C. § 112, second paragraph, due to insufficient antecedent basis. Claim 11 has been amended herein to obviate the antecedent issue. Withdrawal of the rejections is respectfully requested. The amendment does not narrow the scope of the claim 11.

II. REJECTIONS OF CLAIMS 1-31 AND 37-46 UNDER 35 U.S.C. § 103

Claims 1-31 and 37-46 stand rejected under 35 U.S.C. § 103 based on a combination of newly cited U.S. Patent No. 6,230,326 ("Unger") and U.S. Patent No. 6,065,061 ("Blahur"). All pending claims are believed to be allowable for at least the following reasons. Withdrawal of the rejection is respectfully requested.

One of the features recited in independent claims 1, 11, 13, 19, 25, 38, and 43 is directed to "pre-registration" of a cable modem (or a host) with a protection CMTS. For example, independent claim 1 requires, *inter alia*, that "the cable modem is informed of an upstream channel of the protection CMTS." Other independent claims contain recitations similar to those of independent claim 1. As described at, for example, page 12, line 29 - page 13, line 6 of the present specification, a specific exemplary embodiment of the invention involves a cable modem registration process where a cable modem is informed of an upstream channel of a protection CMTS by a working CMTS.

The Unger patent was newly cited as describing the claimed pre-registration of a cable modem (or a host) with a protection CMTS. Although the Office Action admits that the Unger patent does not expressly disclose the cable modem which is informed of an upstream channel of the protection CMTS, the Action still relies on some portions of Unger, which allegedly suggests the claimed pre-registration. Specifically, the Action cites column 3, lines 7-13, and column 6, line 50 et seq. of Unger as describing the claimed feature of the invention. Applicants respectfully disagree.

The cited portions generally describe a CMTS which serves a cable modem (column 3, lines 7-13), and an upstream management channel which is used by a cable modem for transmitting an initialization request to the CMTS (column 6, line 50 et seq.). Most importantly, throughout the Unger patent, there is no description or suggestion that a protection CMTS is utilized. The Examiner equates CMTS's 102 and 103 to the claimed protection CMTS and the claimed working CMTS.

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However, Unger's CMTS's 102 and 103 are illustrated merely as an example of "a plurality of CMTS devices" (column 3, lines 29-34). Nothing in Unger suggests that these CMTS's 102 and 103 have complementary functions with each other, as recited in the claims. For context, the preamble recites that "a working CMTS . . . provides normal service to a cable modem and the protection CMTS . . . takes over service to the cable modem should service from the working CMTS become unavailable." Nothing of the sort is suggested in Unger. Unger shows no cable modems that can communicate with different CMTS's. Each cable modem appears to be limited in its communications to a single CMTS.

In other words, Unger in no way suggests that one of the CMTS's 102 and 103 provides normal service to a cable modem, and another of the CMTS's takes over service to the cable modem, as claimed. Therefore, it is respectfully submitted that the portions of Unger cited in the Action are not relevant.

Applicants note that the Action cites column 4, lines 5-35 of the Unger patent, which relates to a backup *receiver*, not a backup *CMTS*. Such an extra receiver (307) is provided in a single CMTS with other receivers which are also provided in the CMTS. While the backup receiver may provide some protection in the event that a primary receiver fails, such protection does not equate to the CMTS protection afforded by the claimed invention. A receiver is simply a hardware device that may be used within a CMTS. It does not include the logic for communicating with cable modems, as required with a CMTS. Thus, there is no reason to consider registration with an upstream receiver. The upstream receiver is merely acting as a "dumb" hardware component in so far as registration or pre-registration is concerned. Again, nothing in Unger suggests providing a protection CMTS in addition to a working CMTS.


Without acknowledging the above deficiencies of Unger, the Action does point out that Unger lacks (at least expressly) a cable modem being informed of an upstream channel of a protection CMTS (see page 4 of the Action). Possibly, the Office Action cites the Blahut patent as making up this deficiency of the Unger patent. Regardless, Applicants respectfully question application of the Blahut patent because it fails to teach or suggest a protection CMTS. The Blahut system is generally directed to re-routing IP traffic to a different IP address associated with the local loop of the PSTN (public switched telephone network) (column 1, line 53 - column 2, line 4). For example, when the cable link (the primary communications channel) between the CMTS 120 and the CM 115 via the cable link 117 fails, the link between the CMTS 120 and the CM 115 via the PSTN 140 (the secondary communications channel) is established as a fall-back route. It is respectfully submitted that the Blahut patent is directed to providing a fall-back communications channel, not a protection CMTS as claimed. In fact, the Blahut patent merely shows a single CMTS. See, for example, Figs. 1 and 2. Therefore, the Blahut patent fails to cure the deficiencies of the Unger patent.

In view of the foregoing, the invention defined in independent claims 1, 18, 25, 34, 39, 51, and 58 and their dependent claims is believed to be patentable over the cited art. Withdrawal of the rejections is respectfully requested.

III. CONCLUSION

Applicants believe that all pending claims are in condition for allowance, and respectfully request a Notice of Allowance at an early date. If the Examiner believes a telephone conference would expedite prosecution of this application, please telephone the undersigned at 510-663-1100, ext. 245.

Respectfully submitted,
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Limited Recognition under 37 CFR § 10.9(b)

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